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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
09/729,028	12/04/2000	Shiguang Yu	6560	4708

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EXAMINER

OSTRUP, CLINTON T

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 10/28/2002

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/729,028

Applicant(s)

YU ET AL.

Examiner

Clinton Ostrup

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2002 and 09 August 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9. 6) ☐ Other:

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DETAILED ACTION

Claims 15-25 are pending in this application.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 15-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "accelerating" in claims 15 and 22-25 is a relative term, which renders the claim indefinite. The term "accelerating" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The term "accelerating" is indefinite because it is meaningless without a concurrent frame of reference.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15-16 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Luo, H1480

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Luo teaches methods of using dyphyllin, a compound having an alcohol group, as a promoter of hair growth. The reference teaches the topical application of dyphlline to mammals for regulating hair growth in a mammal, including domestic animals, such as cats and dogs that are suffering from hair loss.

Therefore, the reference teaches methods of applying alcohol to the skin of dogs and cats, to treat alopecia. See: col. 1, lines 5-24, line 62-68; col. 2, line 1 – col. 3, line 32; col. 8, lines 7-21, claims 1 and 3; and abstract.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 15-17 and 20-22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luo, H1480 and further in view of The Merck Veterinary Manual, A Handbook of Diagnosis and Therapy for the Veterinarian (Merck).

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Luo teaches methods of using dyphylline, a compound having an alcohol group, as a promoter of hair growth. The reference teaches the topical application of dyphylline to mammals for regulating hair growth in a mammal, including domestic animals, such as cats and dogs that are suffering from hair loss.

Therefore, the reference teaches methods of applying alcohol to the skin of dogs and cats, to treat alopecia. See: col. 1, lines 5-24, line 62-68; col. 2, line 1 – col. 3, line 32; col. 8, lines 7-21, claims 1 and 3; and abstract.

However, the reference lacks the method step of clipping the hair or removing the stratum corneum as claimed instantly in claims 17, 20, 22, and 24.

Merck teaches treating local alopecia with a resorcinol composition, which comprises of castor oil and alcohol. The reference teaches application of the composition to the affected skin and massaging the composition into the skin. Merck teaches that in cases of alopecia not arising from the endocrine system, removal of the diseased glands may be helpful. Moreover, the Merck reference teaches that particular attention should be given to skin cleanliness and that the extent of recovery depends on the amount of damage to the hair follicles. See: pages 915-916 and 1520.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the methods of topically treating hair loss as taught by Luo, by clipping the hair of the dog or cat and removing the diseased glands because of the expectation of obtaining a method of regulating hair growth by first removing diseased glands and then applying the composition to a clean skin surface, which would allow easier permeability of the hair growth composition.

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Claims 15-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over The Merck Veterinary Manual, A Handbook of Diagnosis and Therapy for the Veterinarian (Merck) as applied to claims 15-16 above, and further in view of Eggers et al., 4,849,455.

Merck teaches treating local alopecia with a resorcinol composition, which comprises of castor oil and alcohol. The reference teaches application of the composition to the affected skin and massaging the composition into the skin. Merck teaches that in cases of alopecia not arising from the endocrine system, removal of the diseased glands may be helpful. See: pages 915-916 and 1520.

Although the primary reference teaches alcohol as the major ingredient of a composition to treat local alopecia, by topical application of said composition, the reference does not specifically teach that alopecia has occurred after the hair has been clipped, as claimed instantly in claim 17 and 22, the specific alcohols of instant claims 18-20, 23, or 25, the treatment of cats as claimed instantly in claim 21, or removing the stratum corneum of the skin as claimed instantly in claim 24.

Eggers teaches a virucidal agent against naked vires containing at least 70% methanol, and /or ethanol and from 1-10% glycerol and optionally up to 5% castor oil for improving the skin. The secondary reference teaches that the addition of glycerol to methanol and ethanol does not adversely affect the efficacy of these alcohols and that castor oil does not deteriorate the activity against naked viruses, while the castor oil does improve the skin compatibility. See: col. 1, line 10 – col. 4, line 2.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the alopecia treating composition of Merck by adding the specific alcohols methanol and ethanol as taught by Eggers because of the expectation of obtaining a skin treatment composition comprising methanol and ethanol that would have virucidal as well as alopecia treating properties.

It would have also been obvious to remove hair and the stratum corneum because as taught by Merck, the removal of diseased glands may be helpful. Moreover the primary reference teaches particular attention should be given to skin cleanliness and that the extent of recovery depends on the amount of damage to the hair follicles. Moreover, Merck lacks the specific teaching of treating cats, but it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the alopecia treating formulation of Merck to other fur/hair bearing animals because of the reasonable expectation that a composition useful for the treatment of alopecia on dogs would also be useful for the treatment of alopecia on other fur/hair bearing animals such as cats.

Moreover, the use of isopropanol in conjunction with ethanol and methanol would have been obvious to one having ordinary skill in the art at the time the invention was made because isopropanol is a commonly used, topically applied germicide, which is cheap, easy to use and would be expected to add germicidal properties to a virucidal, alopecia treating composition useful for fur/hair bearing animals.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clinton Ostrup whose telephone number is (703) 308-3627. The examiner can normally be reached on M-F (8:30am-5:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel can be reached on (703) 308-4725. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Clinton Ostrup

Examiner

Art Unit 1619



October 21, 2002



RAYMOND HENLEY, III
PRIMARY EXAMINER
GROUP 1000